

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 154 of 1997

in

SPECIAL CIVIL APPLICATION No 4897 of 1983

with

LETTERS PATENT APPEAL No 83 of 1997

PRAMODKUMAR D PATHAK

Versus

STATE OF GUJARAT

R.B.PARMAR

Vs.

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 154 of 1997
MR BA VAISHNAV for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
MR RJ OZA for Respondent No. 2
 2. LETTERS PATENT APPEAL No 83 of 1997
MR PARESH UPADHYAY for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
MR RJ OZA for Respondent No. 2
-

LETTERS PATENT APPEAL No 605 of 1997

in

SPECIAL CIVIL APPLICATION No 4890 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed

to see the judgements?

2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ARJUNBHAI J CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner
M/S MG DOSHIT & CO for Respondent No. 1
MR RJ OZA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT
Date of decision: 10/09/97

ORAL JUDGMENT: PER C.K.THAKKER J.

Admitted. Mr. Patel Associates appears and waives service of notice of admission on behalf of the State of Gujarat and Mr.R.J.Oza appears and waives service of notice of admission on behalf of Gujarat Public Service Commission. In the facts and circumstances of the case, all the matters have been taken up for final hearing.

All these appeals arise out of a common judgment and order passed by the learned Single Judge in Special Civil Application Nos. 4890, 4897 and 4982 of 1983 on January 29, 1997. The appellants are original petitioners and as their petitions came to be dismissed, they have approached this court by filing the present appeals.

Few relevant facts, may now be stated:

Letters Patent Appeal No.154/97 is filed against an order passed in Special Civil Application No. 4897 of 1983. The appellant was appointed as a Peon in the office of the Gujarat Public Service Commission ("GPSC" for short) on June 4, 1979. Earlier also he was appointed and had worked on daily wages for about ten months. The appointment was purely on temporary basis, initially for 30 days, from June 1, 1979 to June 30, 1979. By order dt. July 2, 1979, he was appointed on temporary basis from July 1, 1979 to August 31, 1979. The appointment was made by the Secretary of the Commission in exercise of the powers delegated under the Government Resolution. General Administration Department, dt. 9th August 1975 and with the approval of the Chairman of the Commission. It appears that the appointment continued from time to time. Since the appointment was not regular, the Commission sent a proposal to the Government to regularise the appointment of the appellant but the Government did not accept the recommendation and by an order dt. 15th September 1983, impugned in the petition, services of the appellant came to be terminated with effect from 15th October, 1983.

Being aggrieved by the said order, the appellant-petitioner filed the above petition which was admitted. Rule was issued and interim relief against termination was also granted.

Letters Patent Appeal No.83 of 1997 is filed by the petitioner of Special Civil Application No. 4982 of 1983. He was appointed as a Clerk on temporary basis in the pay scale of Rs.260-400. His appointment was made after selection held on the basis of the names recommended by the Employment Exchange. His appointment was also continued from time to time. Since the appointment was irregular, the GPSC sent a proposal to the Government to regularise his services. The Government did not agree and his services also came to be terminated by the impugned order dt. 15th September 1983 with effect from 15th October 1983.

Letters Patent Appeal No.605 of 1997 is filed by the petitioner of Special Civil Application No.4890 of 1983, who was appointed as a Driver by GPSC. It is the case of the appellant that he was as driver in Government Transport Service. On coming to know that there was a vacancy in GPSC, he made an application in pursuance of which he was called for interview by the Commission after verifying the name duly registered with the Employment Exchange since 1976. His driving test was taken and he

having successfully undergone that test, was appointed as Driver for a period of one month in the pay scale of Rs.260-400 with effect from January 5, 1978. It was stated in the appointment order that since the appointment was temporary in nature, it was liable to termination at any time without assigning any reason and without giving notice. The appellant was continued from time to time. In his case also, the GPSC sent the name to the Government for regularisation but the Government did not agree and hence by an order dt. 15th September 1983 his services came to be terminated with effect from 15th October 1983.

All the petitions came up for final hearing before the learned Single Judge and, as stated above, the learned Single Judge dismissed all the petitions holding that the appointments made by GPSC were irregular and it was not obligatory on the part of the respondent Government to regularise the services of the present appellants though recommendations were made by GPSC. Since the action taken by the State Government terminating the services of the appellants was not contrary to law, the action could not be interfered with in exercise of powers under Art.226 of the Constitution of India. The learned Single Judge was, therefore, pleased to dismiss all the petitions and vacated interim relief which was granted at the time of admission.

Being aggrieved by the order passed by the learned Single Judge, initially two appellants approached this court by filing Letters Patent Appeal Nos. 154 of 1997 and 83 of 1997, i.e. the appeals were filed by a Clerk and a peon. The Division Bench issued notice to the respondents. On Civil Applications, however, no interim relief was granted. Notices were duly served to GPSC as well as to the Government. During the course of hearing, it was also stated at the Bar that some correspondence was going on between GPSC and Government that in spite of dismissal of petitions whether services of the appellants could be regularised. It was stated that in similar circumstances, certain appointments made by the State Government in 1981 or thereafter i.e. after the appointments of the appellants in 1979 and 1980, services of those irregular appointees were regularised by even amending statutory Rules framed under the proviso to Art. 309 of the Constitution. It was contended that when their services were regularised, the Government ought to have considered cases of the appellants for similar treatment. The Division Bench granted time and also asked the learned counsel for GPSC as well as Assistant Government Pleader, as to whether any decision

was taken. It, however, appears that services of the appellants were not regularised during the pendency of Letters Patent Appeals, but by passing fresh orders, services of both the appellants were terminated. The appellants, therefore, filed two applications being Civil Application Nos.6157 and 6156 of 1997 directing the respondents to continue them in service without giving effect of orders of termination. On 4th July 1997, we passed an order granting interim relief and directing the respondents to continue the applicants in service and not to implement the order dt. 3rd July 1997, which was passed during the pendency of Letters Patent Appeals. It is not disputed that the above order has been complied with by the respondents and the appellants of both the appeals are in service.

So far as Letters Patent Appeal No.605 of 1997 is concerned, the appellant did not immediately prefer the appeal after dismissal of his petition by the learned Single Judge. It appears that during the pendency of petition, he was placed under suspension. Some charges were levelled against him and inquiry was pending. He was getting subsistence allowance. In view of the fact that he was not in actual service, probably he did not think it fit to file any appeal. After the judgment of the learned Single Judge, in view of pendency of two Letters Patent Appeals No.154 of 1997 and 893 of 1997, action of termination was not taken against them. As no appeal was filed by the driver (appellant of LPA No.605 of 1997), his services came to be terminated. He drew the attention of the authorities that an action was taken against him pursuant to the order passed by the learned Single Judge dismissing his petition, but similar action was not taken against other two persons whose petitions were also dismissed. The services of the two appellants, came to be terminated. The driver, hence approached this court by filing Letters Patent Appeal No.605 of 1997 in which there was delay. We issued Rule and after hearing the parties, delay was condoned and that is how all the Letters Patent Appeals are before us.

Various contentions were raised by the learned counsel for the appellants. It was submitted that the impugned action is arbitrary, discriminatory and violative of Arts. 14 and 16 of the Constitution. It is irrational and unreasonable, infringing Art.19 of the Constitution. For this, reliance was placed on the fact that in 1981, a number of irregular appointments came to be made by the State Government in General Administration Department (GAD). Their appointments were continued. The said fact was not disputed by the respondent State.

It was further contended by the learned counsel for the appellants that their services were regularised even by amending statutory Rules. That fact is also not disputed by the learned counsel for the respondents. It was also submitted that the appointments of the appellants were made by the Gujarat Public Service Commission which is competent to make such appointments. This, according to the appellants, was relevant fact and when GPSC made recommendation and requested the Government to regularise the services of the appellants, even if the Government was not bound by such recommendation, it ought to have considered the said recommendation in the light of the action taken by the Government itself in the light of appointments made even in GAD. It was submitted that the appointments could not be said to be contrary to law inasmuch as GPSC had power to make such appointments. Regarding appointment of the appellant of the Letters Patent Appeal No.83 of 1997 (Junior Clerk), it was further pointed out that it was made after selection held on the basis of names recommended through Employment Exchange. The case of the appellant of Letters Patent Appeal No.154 of 1997 (Peon) is that he was required to pass only Hindi Examination and he has passed that examination. The appointment of the appellant of Letters Patent Appeal No.605 of 1997 (Driver) was made after taking driving test. Though his name was not sent through Employment Exchange, but his name was registered with Employment Exchange.

Finally, it was submitted that even if appointments of all the appellants were irregular and were subject to passing of an examination, the appellants have no objection to appear at any examination and to undergo that process. Such a course was adopted with regard to the irregular appointees in General Administration Department by the Government and it was decided that irregular appointments of all those persons will be regularised subject to passing of the examination. The prayer of the appellants is that when that benefit is extended in favour of other employees the present appellants should also be granted similar benefit. They have no objection to appear at the examination and they will undergo that process. For that purpose, applications have been made by the appellants of Letters Patent Appeal No.154 of 1997 and 83 of 1997 wherein it is stated that they are ready and willing to appear at the relevant examination to be held by the respondents. They have further stated that they are willing to appear at the ensuing examination or at any time as directed by the respondents.

Mr. Patel Associates submitted that the orders passed by the learned Single Judge cannot be said to be contrary to law. He also submitted that initial appointment was irregular and contrary to law. If in the light of these facts, orders are passed terminating the service of the appellants, it cannot be said that they require interference and hence the Letters Patent Appeals are liable to be dismissed.

Mr. Oza appearing for GPSC submitted that the action was taken in accordance with law and if services of the appellants are terminated, the appellants cannot make any grievance against it. The GPSC requested the Government to regularise the services of the appellants, but when the Government has taken a decision, it cannot do anything in the matter.

Having heard the learned counsel for the parties, we are of the view that these Letters Patent Appeals should be partly allowed. So far as Letters Patent Appeal No. 154 of 1997 and 83 of 1997 are concerned, as soon as the orders were passed by the learned Single Judge, the appellants have approached this court. Interim relief was not granted, but correspondence was going on between GPSC and the Government. As during the pendency of Letters Patent Appeals services of the appellants were terminated by passing orders, we granted interim relief. They are, therefore, in service. Considering the fact that the State Government had appointed a number of persons in GAD and though their appointments were irregular and they have been given an opportunity to appear at the examination so that their services can be regularised, in our opinion, it would not be fair on the part of the Government not to give similar opportunity to the appellants also. Looking to the order dt. 15th September 1983, terminating the services of the appellants, it is clear that the only ground of termination of services was that their appointments were not made legally inasmuch as they have not been appointed by passing relevant examination. So far as the second order is concerned, as stated by us, it was passed during the pendency of the Letters Patent Appeal and the ground was that the petitions were dismissed by the learned Single Judge and no interim relief was granted by the Division Bench. Their services were, therefore, liable to be terminated.

The appellants of LPA Nos. 154 of 1997 and 83 of 1997 themselves have requested the respondent authorities to permit them to appear at the examination and have shown their willingness to clear that examination. When

such chances is given to the employees appointed by the Government on irregular basis in GAD, it would be in the interest of justice, if we direct the respondent authorities to give similar treatment and to extend the said benefit in favour of both the appellants also. The question of age bar may arise in their cases. As observed by the Hon'ble Supreme Court in Dr.Surinder Singh Jamwal & another vs. State of Jammu and Kashmir, AIR 1996 SC 2775, such persons who are not appointed on regular basis must get their appointment regularised in accordance with law. If they are ad hoc employees they must seek selection in accordance with Rules. Considering the fact that they were in service and by the time they appeared at the examination, there might be age bar, the Hon'ble Supreme Court directed that the State Government would relax necessary age qualification so as to enable them to apply for and seek recruitment through GPSC. Similar view was taken by the Apex Court in Mosin Unissa v. Tamil Nadu Public Service Commission, 1996(4) JT 230.

The learned counsel for the appellants stated that when both the appellants were initially appointed, they were not age barred. In these circumstances, it is directed that the respondent authorities will extend an opportunity of appearing at the examination for getting their services regularised. If they are age-barred, the authorities will relax the age in their favour. Till the result of such examination is declared ad.interim relief granted by us will be continued. Both these appeals are thus partly allowed to the aforesaid extent.

So far as Letters Patent Appeal No.605 of 1997 is concerned, as seen earlier the appellant was under suspension. In affidavit-in-reply filed on behalf of the respondents, it is stated that the inquiry is over and the charges are proved. We express no opinion so far as departmental inquiry is concerned. We may, however, direct the respondent authorities to pass an appropriate order as expeditiously as possible, preferably within six weeks from the receipt of the writ. We also direct that if such order would not result in major punishment being imposed on him, benefit which is ordered to be extended in favour of appellants of Letters Patent Appeal Nos. 154/97 and 83/97 will also be extended in his favour, provided he also makes an application which has been made by these two appellants. If the final order results in major punishment being imposed on the appellant, he may challenge the same by taking appropriate proceedings in accordance with law. Since he was under suspension, departmental proceedings were going on and now, as stated

in the counter-affidavit, the proceedings are over and Inquiry Officer has submitted his report, we do not think it proper to order reinstatement or to consider him under suspension. The authorities are directed to take appropriate action after the proceedings are finalised. The third Letters Patent Appeal also is partly allowed to the extent indicated hereinabove. All the appeals are accordingly disposed of. No order as to costs.

Dt.10.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)